

**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000**



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

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As you know, I am the Assistant District Attorney Assigned to the above-referenced case. The information below concerns Police Officer Matthew Kelleher, Police Officer Robert Passero, and Lieutenant Kevin Shea, of the Midtown South Precinct, whom the People anticipate calling as witnesses in the above-captioned case.

The following advisements are made with regard to Officer Kelleher

1. The Civilian Complaint Review Board (CCRB) substantiated an allegation that Officer Kelleher, on March 27, 2019, abused his authority by conducting a search of a person's wallet to look for the person's identification without legal justification.

In relevant summary, the CCRB investigation determined as follows.

An employee of a café on Sixth Avenue called the police to ask that a man be removed from the establishment. Officer Kelleher and other officers arrived and told the man multiple times to leave. The man refused multiple times before eventually walking outside. Once outside, the man refused to comply with multiple orders from one of the other police officers to walk away from the area directly in front of the store.

Officer Kelleher stated to the CCRB that the other officer put his hand on the man's shoulder and told him to leave, and the man bladed his body to the other officer and raised his hands up by his face in a "fighting stance." Office Kelleher stated that the other officer responded to the man's actions by grabbing the man by his shirt, physically walking him back a few steps, and placing him on the ground. The other officer later told Officer Kelleher that he did this so the man would not have a chance to strike him first. Officer Kelleher stated that the man's repeated refusal to comply with orders led Officer Kelleher to think he was not

fully coherent and that his behavior warranted an ambulance being called to remove him as an EDP, as opposed to arresting him. After the officers handcuffed the man, Officer Kelleher had a brief conversation with the other officer in which they agreed that the man should go to the hospital.

Body-worn camera videos show that the other officer tells the man that because he did not buy anything, he was not a customer and he had to leave. The man takes a step towards the other officer and yells at him that he is a customer. The other officer then tells the man to “take a hike” and places his right hand on the man’s left shoulder and his left hand on the man’s left forearm. The man says, “Don’t touch me, man,” and pulls his right arm away from the other officer quickly. The other officer then grabs the man’s coat, near the collar, with both hands and pushes him back towards the street and they fall into a pile of garbage bags. From the aforementioned body-worn camera videos, the investigation determined that the man did not take a “fighting stance” by putting his hands up by his face. Instead, he pulled his arm away from the other officer.

It was undisputed that prior to the ambulance arriving, Officer Kelleher opened the man’s wallet and looked inside. Officer Kelleher stated that he recovered the man’s wallet, which fell to the ground during the struggle to handcuff him. Officer Kelleher looked in the man’s wallet for his ID, but did not otherwise look through the wallet. The only purpose for looking in the wallet was to obtain ID.

At 09:45 of the video from the other officer’s body-worn camera, the other officer says, “Let me make sure this guy don’t got nothing sharp on him.” Officer Kelleher can then be seen opening the man’s wallet and saying, “[The man’s last and first names.] Name sounds familiar.”

The CCRB’s analysis was in relevant summary as follows.

The Court of Appeals of New York held in People v. Reid, 24 NY3d 615 (2014), that a search must be incident to an actual arrest and not to probable cause for an arrest that might have happened but did not. Patrol Guide Procedure 221-13 demands that after restraining an EDP, officers must remove property that is dangerous to life or will facilitate escape. Officer Kelleher’s purpose for searching the man’s wallet was not to remove property that was dangerous to life or could facilitate escape, but to identify the man. As noted above in People v. Reid, a warrantless search of a person must be incident to an actual arrest. Given that the man was not arrested, that AIDED reports may be prepared without obtaining a civilian’s ID, and that civilians can be admitted to the hospital without being identified, there was no legal justification to search the man’s wallet.

The following advisements are made with regard to Officer Passero:

1. Officer Passero may be listed as a named defendant in the civil action entitled *Horton v. City of New York et al.*, 14-CV-00717
2. The New York City Police Department (NYPD) has deemed substantiated allegations in connection with the following incident: On April 10, 2017, Robert Passero was called as backup to an incident in which another officer was assaulted by a man after the officer left the station house. Robert Passero's sector requested EMS to respond to the location and the person who assaulted the other officer was transported to a hospital. The following allegations were substantiated against Robert Passero in connection with this incident: (1) he failed to make a timely notification to a supervisor regarding the incident and (2) failed to prepare an Aided Report for the person who was transported to the hospital.

The following advisements are made with regard to Lieutenant Shea:

1. The New York City Police Department (NYPD) has deemed substantiated an allegation that, while assigned as the Desk Officer at Police Service Area 2 on December 25, 2011, Kevin Shea failed to ask for clarification when informed that two officers under his supervision in the command had a dispute that led to a shoving match.
2. The New York City Civilian Complaint Review Board (CCRB) has deemed substantiated an allegation of "Abuse of Authority" for entering an apartment in Kings County New York without legal authority in connection with an incident occurring on December 12, 2011. On the evening of December 12, 2011 Kevin Shea was supervising patrol officers. At approximately 9:30, two officers were speaking to two civilians in connection with some conduct they had observed at the time. A third civilian approached the officers, challenged their actions and began to record the encounter. The officers allowed the first two civilians to leave and they entered the apartment building. The third civilian remained and, according to the officers, became loud and abusive. One of the officers informed him that he was going to issue a summons for disorderly conduct. The third civilian then fled into the apartment building with the first two officers in pursuit. One of the officers was able to briefly grasp him but he extricated himself from his grasp. The subject then entered an apartment with the officers still in pursuit. Another occupant of the apartment, however, blocked the officers' pursuit and informed them that they were not authorized to enter the apartment. The officers requested backup and numerous police officers responded to the scene including Kevin Shea who was the supervising sergeant at the time. After the officers informed him of what had transpired, Kevin Shea authorized the entry into the apartment and also entered the apartment where the suspect and the person who had interfered with the officers' pursuit of the suspect were placed under arrest. The Kings County District Attorney's Office declined to prosecute the cases. Specifically, CCRB concluded that the warrantless entry into the apartment was not justified by the exigent circumstances or the hot pursuit exceptions. Accordingly, the allegation of Abuse of authority for the entry into the apartment was substantiated.

3. The New York City Police Department brought Charges & Specs on the above substantiated CCRB allegation that Kevin Shea entered the apartment without sufficient legal authority and a Kevin Shea was found not guilty at a departmental trial.

Please note that the information above includes only those civil rights lawsuits of which the People are aware; information about lawsuits is publicly available both from the relevant courts and various online services such as PACER. Any information herein regarding civil lawsuits against an officer is not necessarily a complete list of civil lawsuits in which that officer is a defendant. Various publicly available websites and databases contain disciplinary information for certain law enforcement officers. Information in such databases about this officer is not necessarily included in this advisory.

Please also be advised that allegations of misconduct that have not been substantiated and are not pending (including, but not limited to, findings of unsubstantiated, unfounded, and exonerated), and allegations of technical infractions, are not subject to disclosure and are not included in this advisory. The decision to include information in this advisory does not represent a conclusion by the People that it is required to be disclosed.

Finally, the People reserve the right to oppose or move to limit the use of any information included herein or disclosed in the future.

Should you wish to discuss this matter, please feel free to call me at (917) 375-6921.

Sincerely,


Julia Schast
Assistant District Attorney
(212) 335-3652